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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/500,473	02/09/2000	Maurice Clarence Kemp	MORN-0002P2	2676

7590 10/24/2003

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EXAMINER	
MADSEN, ROBERT A	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/500,473	KEMP ET AL.	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 July 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 39-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13,39-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The Response filed July 31, 2003 has been entered. Claims 1-13 and 39-41 remain pending in the application.

2. The rejection of claims 1,2,5,6,12,13, and 39-41 made under 35 102(b) as being anticipated by Nasu (US 4983409) and the rejection of claims 1,2,12,13,39-41 made under 35 USC 102(e) as being anticipated by Jacobsen et al. (US 6024994) s hereby withdrawn.

IDS

3. A line appears through the second reference on the copy of the IDS filed 6/16/2003. This is a image scanning error and not the Examiner's intent. The Examiner has rewritten the reference information so that it is clear that the reference has been considered.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4,6,7,9,11-13,39-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Basel et al. (US 436197), as evidenced by Wagner et al. (US 3366490).

6. Basal et al. inherently teach an AGIIS in contact with a nutrient, such as tomatoes, with a carrier such as storage water, since Basel et al. teach (1) coating the tomatoes with hydrochloric acid, (2) pouring calcium hydroxide over the hydrochloric

acid-coated tomatoes to form a salt , and (3) an acidic pH (Column 1, lines 10-40, Column 2, line 57 to Column 3, line 44, and Column 5, line 30 to Column 6, line 1). Basel et al. inherently teach an acidic pH by stating that when treating tomatoes, " Upon termination of storage of the product the pH of the product should be raised *preferably* to the *initial pH* level which the product had to the acidic storage of the product" (Column 5, lines30-33). As evidenced by Wagner et al. tomatoes, have a pH of "less than 7" (See Example 1, Table 1).

7. Claims 1,2,5,6,12,13,39,40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Braun et al. (US 4830862). See Column 5, line 5 to Column 7, line 35. It is noted that although not preferred, Braun et al. do teach a salt resulting from the reaction between an acid and a Group II A hydroxides or Group IIA salt of a dibasic acid.

8. Claims 1-4,6,7,9, 11-13,39,40,are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Theron et al. (US 4064284). See Abstract, Column 2, line 3 to Column 3, line 29. It is noted that although Theron et al. teach *eventually* neutralizing the solution, the nutriment is in contact with an acidic AGIIS solution during the neutralizing process since a salt results from the reaction between an acid and a Group II A hydroxides or Group IIA salt of a dibasic acid.

9. Claims 1,5,6,12,13,39,40,are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kearns et al. (EP 0584976 A2). See Abstract, Page 3, line 2 to Page 4, line 20. Applicant's attention is directed to Page 3 lines 18-23 in particular, the AGIIS slurry resulting from the reaction of citric acid and Group II A hydroxides or Group IIA salt of a dibasic acid has a pH of 4-6.

10. Claims 1-4,6, 7-9,11-13,39,40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tenmiyo et al. (JP358179436 A). See English Abstract. Tenmiyo et al. teach the nutriment is exposed to the reaction of an acid, such as sulfuric, and Group II A hydroxides or Group IIA salt of a dibasic acid has a pH of 5.5 to 8.

11. Claims 1-9,11-13,39,40 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Frielich et al. (US 6086927). See Column 2, lines 20-50, Column 3, line 10 to Column 4, line 28. Note that the pH is between 6 and 7 (i.e. in Column 4, lines 1-4, and the reaction involves a mineral acid and a Group II A hydroxide)

12. Claims1-6,7-12 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wurzburger et al. (US 6331514 B1). See Column 1, lines15-19, Column 4, lines 23-67, Column 7, lines 30-41,Column 8, lines 1-20,Column 8, line 53 to Column 9, line 15, Column 10, line 15-25, Column 10, line26 to Column 11, line 35.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frielich et al. (US 6086927).

Although Frielich et al. teach sulfuric acid added to calcium hydroxide, Frielich et al. are silent in teaching the range of 1 mole of sulfuric acid to every 0.1-0.5 moles of calcium hydroxide per se. However, Frielich et al. do teach the level of calcium hydroxide added depends on the final product and the level of calcium fortification desired and the amount of sulfuric acid added depends on the desired flavor and balance of natural fruit flavors (Column 3, lines 10-25 and Column 3, line 33 to Column 4, line 4). Therefore to add any particular mole ratio of sulfuric acid to calcium hydroxide would have been an obvious result effective variable of (1) the desired level of calcium and (2) the desired flavor.

Response to Arguments

15. Applicant argues that the art of record applied in the Office Action mailed May 6, 2003, teach "neutralized solutions" and not applicant's "highly acid solutions" . However, "highly acidic" is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the Examiner understands an acidic solution of AGIIS to be formed by the reaction of a mineral acid, such as hydrochloric or sulfuric acid, and a Group IIA metal hydroxide and/or a Group IIA salt of a dibasic acid (Page 7, lines 15-24 and Page 21, lines 8-10 of the present application). Applicant has defined an "acidic" AGIIS solution as having pH "less than 7" (Page 8, lines 9- 13 of the present application). As such, the Examiner maintains that as long as the art of record teaches (1) a mixture of applicant's disclosed mineral acids and Group IIA metal hydroxides or Group IIA metal []salt of a dibasic acid(2) a the formation of a salt, and (3) a mixture pH of less than 7 , the art of record inherently teaches the recited acidic solution/suspension of AGIIS.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Robert Madsen
Examiner
Art Unit 1761